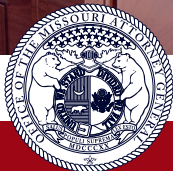


The Court Process

Understanding the Criminal Justice Process



Catherine L. Hanaway

MISSOURI ATTORNEY GENERAL

Introduction

Missouri law establishes certain guarantees to crime victims, including participation in the criminal justice system.

Victims can empower themselves and take advantage of these legal protections by learning about how the court process works. This guide will give you an overview of that process, beginning with the arrest and filing of criminal charges, all the way through the appeal process and parole. In addition, you will find definitions of frequently used terms that will help you understand what is happening inside the courtroom and with the case.

It is my hope that this guide will provide you with tools you need to navigate the system and empower you to fully participate in Missouri's court process.

Sincerely,



Catherine L. Hanaway

Attorney General

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The Court Process

The State of Missouri prosecutes crimes committed against the citizens of this state. The prosecuting attorney in each county usually handles the case.

In a criminal case, the state has the burden of proving beyond a reasonable doubt that the defendant committed the alleged crime. Defendants are presumed innocent and never have the burden of proving their innocence.

Defendants have the right to be represented by a lawyer throughout the process.

ARREST AND COMPLAINT

Once a formal charge has been filed, usually in the form of a written complaint, the prosecuting attorney can go to a judge to obtain an arrest warrant. This arrest warrant will allow local law enforcement personnel to arrest the person named in the warrant on the suspicion that he has committed the crime set forth in the complaint.

PRELIMINARY HEARING *(Held for felonies only, not misdemeanors)*

Felony cases begin with a preliminary hearing — a mini-trial in which testimony is taken under oath. The defendant may waive a preliminary hearing. If the defendant chooses to proceed with a preliminary hearing, the judge, the defendant, the defendant's attorney, the prosecutor, and any victims or witnesses subpoenaed will attend.

At the preliminary hearing, the prosecutor will present evidence to show the judge that there is probable cause to believe that the defendant has committed the crime.

The defense attorney may cross-examine the state's witnesses and produce any evidence. If probable cause is established, the judge will order the defendant to be "bound over" for trial in circuit court. If the defendant waives the preliminary hearing, the case usually will be sent directly to circuit court for trial.

If the judge decides that probable cause has not been established, the court dismisses the case and the defendant is released. This also may occur if witnesses fail to appear to testify.

If probable cause is not found, the prosecutor can later file another complaint against the defendant, based on the same crime, but the prosecutor would typically need to present additional evidence to prove probable cause.

At any point during the prosecution, the prosecutor may voluntarily decide to dismiss the charges. This is called a "nolle prosequi."

GRAND JURY

A grand jury replaces the preliminary hearing in certain cases as a method by which criminal charges can be filed. A grand jury is a panel of private citizens, chosen in a manner similar to the way in which trial juries are chosen, whose job is to look into allegations of criminal activity.

The prosecutor presents evidence to the 12 grand jurors, nine of whom must agree on whether a crime was committed and whether there is probable cause to believe the defendant committed it.



DID YOU KNOW?

During a preliminary hearing, a prosecutor will present evidence to show the judge there is probable cause to believe a crime has been committed and the defendant did it.

As with a preliminary hearing, the case is either bound over to the circuit court or the defendant is freed.

Grand jury proceedings are closed to the public. Defendants do not attend unless they are testifying as witnesses.

TESTIFYING

During a felony prosecution, witnesses probably will have to testify at least three times:

- At depositions
- At the preliminary hearing or before the grand jury
- At trial

Witnesses also may have to testify:

- At hearings on pretrial motions
- At sentencing

ARRAIGNMENT

This is the first formal presentation of charges to the defendant, who must enter a plea. The defendant may plead guilty, not guilty, not guilty by reason of insanity, and if the defendant refuses to enter a plea, the judge will enter a plea of not guilty on their behalf. Also, the judge can raise or lower the defendant's bond, if any.

The arraignment is open to the public. In larger counties, an assistant prosecuting attorney is assigned to the case after arraignment (in some cases, the same prosecutor will be assigned from the onset) and the case is added to a judge's docket.

The court — with input from the prosecutor and defense attorney — sets a trial date and hearing dates on pretrial motions. The trial date may change because of requests for continuances in the case or because of other cases on the trial docket for that day.



THE TRIAL

A jury usually is selected on the first day of trial in a process known as *voir dire*. The prosecutor then must make an opening statement. The defense attorney then either may make his opening statement or he may wait to make it until after the state has presented its evidence. After the prosecutor presents the state's case, the defense may, at its discretion, present evidence.

Once all evidence is heard, the court reads written instructions to the jury. The instructions state the law that applies to the case. The prosecutor then makes a closing statement, the defense makes its closing statement, and the prosecutor then may make additional closing remarks.

The jurors then retire to deliberate. They are required to decide whether the state has presented evidence to establish "beyond a reasonable doubt" that the defendant committed each element of the charged crime.

The jurors must unanimously agree on either guilt or innocence. If they cannot, the trial will end in a hung jury or mistrial and the case may be tried again.

If the defendant is found not guilty, the State is barred from retrying him or her on that charge. This is known as the prohibition against double jeopardy.

If the defendant is found guilty, the prosecutor and defense are then allowed to present additional evidence to the jury on the issue of sentencing. Once the evidence concludes, the judge reads further instructions to the jury, which retires to deliberate the appropriate sentence.

In some cases where the defendant has prior convictions, the judge will impose a sentence without a jury recommendation at a separate sentencing hearing.

CAPITAL CASES

When a defendant is found guilty of first-degree murder, which carries a possible death sentence, a separate hearing on punishment is held before the same jury. Jurors will recommend a sentence of death or life imprisonment without parole.

PRESENTENCE INVESTIGATION

Before sentencing, the state Board of Probation and Parole may investigate to determine if the defendant is an appropriate candidate for probation and may make a recommendation to the judge.

SENTENCING

For each crime, the statute creating the offense specifies a range of punishment, such as “five to fifteen years imprisonment.”

If the defendant was sentenced by a jury, the judge cannot increase the punishment specified by that jury but can reduce it. In some cases where the defendant has prior criminal convictions, the jury does not consider the sentence. Instead the judge decides the punishment.

The defendant may be jailed, imprisoned or placed on probation. If a defendant is sentenced to imprisonment, that sentence will be stated as a specific term of days or years, such as “fifteen years imprisonment.”

The defendant also may be ordered to make restitution, to pay court costs or to pay a fine.

An offender convicted of a nonviolent class C or D felony with no prior prison commitment, after serving 120 days of his sentence, may, in writing, petition the court to serve the

remainder of his sentence on probation or an alternative sentence. The judge, after recommendations by the Department of Corrections, will decide whether to grant the request.

APPEALS PROCESS

If found guilty, the defendant can appeal the decision after the court officially pronounces the sentence.

The Missouri Attorney General's Office handles all the felony appeals in the state. If the appeal is from a misdemeanor conviction, the state will be represented by the prosecuting attorney.

PAROLE HEARING

A prisoner is often eligible for parole before the sentence is completed. The Board of Probation and Parole decides when a prisoner will be eligible for parole, based on various guidelines, and when that prisoner actually will be released. A victim or family of a deceased victim may attend parole hearings and request that parole be denied. A prisoner who has been granted parole will be given a date when he will be released (the "release date").

Fines

Chapter 558, RSMo, allows for persons convicted of crimes to be sentenced to pay these fines:

Class C, D or E felony: Up to \$10,000, or up to twice the amount of the offender's gain from the crime, not to exceed \$20,000.

Class A misdemeanor: Up to \$2,000.

Class B misdemeanor: Up to \$1,000.

Class C misdemeanor: Up to \$750.

Class D misdemeanor: Up to \$500.

Infraction: Up to \$400.

These penalties do not apply in cases where the statutes outline fines for a specific offense.

In lieu of the fines listed above, a person convicted of a misdemeanor or infraction may be fined an amount fixed by the court, not exceeding double the amount of the person's gain from the commission of the offense.



Prison Terms

Missouri Revised Statutes, Chapter 558, provides for these terms of imprisonment:

Class A felony: 10-30 years or life imprisonment.

Examples: Second-degree murder; first-degree robbery.

Class B felony: 5-15 years.

Examples: Voluntary manslaughter; second-degree robbery; first-degree burglary.

Class C felony: 3-10 years.

Examples: First-degree involuntary manslaughter; stealing \$25,000 or more; first-degree sexual abuse.

Class D felony: Up to seven years.

Examples: Second-degree assault; stealing \$750 or more; forgery.

Class E felony: Up to four years.

Examples: Second-degree involuntary manslaughter; incest; passing bad checks with no account.

Class A misdemeanor: Up to one year.

Examples: Fraudulent use of a credit device, value of property or services is less than \$750; tampering with computer data; failure to report a shooting.

Class B misdemeanor: Up to six months.

Examples: First DWI offense; peace disturbance; first-degree trespass.

Class C misdemeanor: Up to 15 days.

Examples: Animal neglect; gambling; littering.

Court Terms

Acquittal: Legal judgment, based on the decision of either a jury or a judge, that an accused is not guilty of the crime for which he or she has been charged and tried.

Adjudication: Judicial decision that ends a criminal proceeding by a judgment of acquittal, conviction, or dismissal of the case.

Appeal: Following a conviction, the offender may appeal the judgment to a state appellate court. The Missouri Supreme Court automatically hears death sentence cases; otherwise, the appeal is heard by the Missouri Court of Appeals.

Arraignment: Court appearance where formal charges are read to the defendant and where the defendant is asked to enter a plea.

Arrest warrant: An order made on behalf of the state, based on a complaint and signed by a judge, authorizing police to arrest a person thought to have committed a crime. A person arrested on a warrant stays in jail until bail is posted or until released by order of the court.

Associate Circuit Court: An accused is arraigned in the Associate Circuit Court before being bound over to the Circuit Court for further proceedings.

Bail: Money or property promised or given to the court as security when a defendant is released before and during trial with the agreement he will return to court when ordered. The court sets the bail amount or value depending on several factors, including seriousness of charges and the likelihood that the defendant will attempt to flee prior to the required court appearances. Bail is forfeited to the court if the defendant fails to return to court.

Beyond a reasonable doubt: Degree of proof needed for a judge or jury to convict an accused person of a crime.

Burden of proof: In criminal cases, the state carries the burden of establishing beyond a reasonable doubt that the accused committed the offense.

Capital offense: Commission of first-degree murder. Killing someone with deliberation is punishable by a sentence of death or life imprisonment without the possibility of probation or parole.

Charge: Formal accusation filed by the prosecutor's office that a person has committed a specific crime. Also referred to as "pressing charges."

Circuit Court: Court that has jurisdiction in criminal matters over all felonies.

Complaint: Preliminary charge made by the state that a person has committed a specified offense.

Concurrent sentences: Sentences run, or are served, at the same time.

Consecutive sentences: Sentences run one after the other.

Continuance: Delay or postponement of a court hearing. A case can be continued for good cause, such as illness or witness unavailability, or by agreement of the parties.

Conviction: Court judgment based on the decision of a jury or judge that the defendant is guilty of the crime for which he was tried.

Crime: Violation of the law.

Defendant: Person formally charged with committing a specific crime.

Defense attorney: Lawyer who represents the defendant.

Deposition: Sworn testimony of a witness taken outside of court in the presence of the attorneys for the defense and prosecution. A deposition can be used at trial to impeach or discredit a witness's testimony or can be read to a jury if the witness is unavailable.

Dismissal: Decision by a judicial officer to end a case for legal or other reasons.

Disposition: Final decision that ends a criminal proceeding by judgment of acquittal or dismissal, or sets the sentence if the defendant has been convicted.

Felony: Serious crime punishable by more than one year in prison.

Grand jury: Body of persons, selected and convened upon order of a judge, to inquire into and return indictments for crimes. The grand jury has the power to request that the circuit clerk issue subpoenas to bring people to testify before it.

Habeas corpus — federal: Proceeding where a prisoner challenges the lawfulness of his imprisonment. A writ of habeas corpus action does not determine the prisoner's guilt or innocence, but reviews the constitutionality of the imprisonment.

Hearing: Legal proceeding in which a judicial officer or administrative body hears arguments, witnesses and evidence.

Hearsay: Testimony based not on a witness's own knowledge, but on matters told to him by another person.

Implied consent: If a person is granted the privilege to hold a driver's license, he has automatically given "implied consent" to submit to alcohol or drug testing. Refusing to consent results in license revocation for one year. The revocation is handled administratively through the Missouri Department of Revenue, not through a criminal court.

Indictment: Formal charging document presented by the prosecuting attorney to a grand jury. The grand jury may then issue the indictment if it believes that the accusation, if proved, would lead to a conviction.

Information: Formal charging document issued by a prosecuting attorney (with no grand jury involvement).

Infraction: Violation of a statute in which the only punishment authorized is a fine and which is expressly designated as an infraction.

Jail: Local facility where persons in lawful custody are held. Defendants awaiting trial and defendants convicted of minor crimes usually are held in jail, not prison. Any person who receives a prison term of one year or less will serve it in the county jail. Those with longer terms will go to prison.

Judicial officer or judge: Officer of the court who determines causes between parties or renders decisions in a judicial capacity. The judge generally decides questions of law.

Misdemeanor: Crime less serious than a felony that is usually punishable by a maximum one-year jail term, a fine, or both.

Nolle prosequi: Voluntary dismissal of criminal charges by the state.

Parole: Release of a prisoner from imprisonment, but not from legal custody.

Personal recognizance: Promise of an accused person to the court that he will return to court when ordered to do so. The promise is given in exchange for release before and/or during his trial.

Plea: Defendant's formal answer in court to the charge he is accused of committing. The four types of pleas are:

- **Guilty:** Admission of commission of the crime as charged.
- **Not guilty:** Complete denial of guilty. A trial will follow.
- **Not guilty by reason of insanity:** Denial of guilt because of mental disease or defect excluding responsibility. A trial will follow in which the defendant's mental fitness will be an issue. A defendant simultaneously may plead not guilty and not guilty by reason of insanity.
- **Alford:** Not an admission of guilt but that there is sufficient evidence establishing guilt.

Plea agreement: Agreement between the state and defendant in which the defendant agrees to plead guilty under certain terms and conditions. Since both the state and defendant risk losing at trial, plea agreements allow a reasonable disposition to be reached without going to trial. The victim has the right to be informed of the plea agreement and to comment on the offer. The judge must approve all plea agreements.

Post conviction proceedings: Review procedures following conviction and direct appellate review. Typically the grounds for relief are limited and different from those on appeal from a conviction.

Preliminary hearing: Hearing for a person charged with a felony before an associate circuit judge. The state must

establish there is probable cause to believe the accused committed the specific crime charged. Witnesses may be required to testify.

Presentence investigation: Investigation usually conducted by a probation officer after a guilty plea or verdict. The judge can learn more about the defendant's criminal history and personal background before imposing a sentence. Victims of the crime also will be asked how they have been impacted.

Prison: State facilities where persons convicted of felony offenses are held. Prisons are operated by the Department of Corrections.



Pro se: To defend oneself. The defendant is not represented by a lawyer, has waived the right to counsel in a criminal proceeding, or is otherwise not represented in a civil proceeding.

Probable cause: Degree of proof needed to arrest.

Probation: Conditional freedom granted by the court to a convicted person, who usually is supervised by a probation officer. If a defendant violates the conditions of probation, probation may be revoked following a probation revocation hearing, and he will be taken into custody.

Prosecutor: Lawyer employed by the government to represent the public's interests in court proceedings against people accused of committing crimes.

Public defender: Lawyer employed by a government agency to represent defendants who cannot afford private lawyers.

Restitution: Payment made by a defendant to the victim as reimbursement for monetary losses incurred as a result of the crime. Restitution may be ordered by the court as part of a sentence.

Subpoena: Court order requiring a person to appear in court on a specified day and time to give testimony or to produce documents or records. Failure to appear constitutes contempt of court.

Summons: Court order used to bring a person accused of a minor crime to court.

Suspended execution of sentence: Defendant is placed on probation without having to serve a sentence of incarceration if conditions of probation are met.

Suspended imposition of sentence: Defendant is placed on probation without a sentence being imposed. If the conditions of probation are not met, he later may be sentenced and incarcerated.

Truth in sentencing: Requires someone convicted of a dangerous felony to serve a minimum 85 percent of the sentence. Missouri law defines dangerous felonies as:

- Arson, first degree
- Assault, first degree
- Assault of law enforcement officer, first degree
- Attempted forcible rape if physical injury results
- Domestic assault, first degree
- Elder abuse, first degree
- Forcible rape
- Forcible sodomy
- Kidnapping
- Murder, second degree
- Robbery, first degree
- Statutory rape, first degree (when victim is younger than 12)
- Statutory sodomy, first degree (when victim is younger than 12)
- Certain child abuse cases

Victim impact statement: Statement given by a victim at bond, plea, and sentencing hearings that explains how a crime has affected him. The statement is the only time a victim will have to address the judge, who decides the fate of the accused. The statement is given to the prosecuting attorney, who forwards it to the judge after a verdict is reached and prior to sentencing.

Voir dire examination (or voir dire): Procedure in which the prosecuting and defense attorneys question prospective jurors to pick a jury.



OFFICE OF ATTORNEY GENERAL
Catherine L. Hanaway

P.O. Box 899
Jefferson City, MO 65102
573-751-3321
ago.mo.gov